

# SPECIAL NOTICE

April 16, 2004

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## **Sealed Beverages-Sales Tax Changes**

SB 5783 (Chapter 168, Laws of 2003)

**Effective January 1, 2004**, Washington adopted food definitions based on the national Streamlined Sales and Use Tax Agreement. The changes significantly affected the application of retail sales tax to food products.

Under the new law, “food and food ingredients” are exempt from retail sales tax unless they fall within the definition of “soft drinks,” “dietary supplements,” or “prepared foods.” This notice discusses the definition of “soft drinks” and its effect on the application of sales tax to sealed beverages. “Dietary supplements” and “prepared foods” are discussed in separate notices.

### **Soft Drinks are subject to retail sales tax.**

“**Soft Drinks**” are nonalcoholic beverages sold in any manner, including in sealed containers, that contain natural or artificial sweeteners. However, beverages that contain any milk, milk products, or milk substitutes or that contain more than 50% vegetable or fruit juice by volume are not defined as “soft drinks” even if they contain sweeteners. Beverages in sealed containers that contain fruit or vegetable juice are required to disclose the percentage of juice by volume on the front of the label or near the “Nutrition Facts” box.

“Soft drinks” do not include frozen, powdered, or concentrated beverages.

Soft drinks and any other beverages served with an eating utensil provided by the seller, including hot coffee or juice from a fountain, are prepared food and subject to sales tax.

Carbonation is no longer a factor in determining taxability. Bottled water is no longer subject to sales tax.

## Taxability of Sealed Beverages

### Taxable

**Soft Drinks** (sweetened, 50% or less fruit/vegetable juice, no milk or milk substitutes):

- ◆ Sports drinks
- ◆ Bottled tea/coffee, sweetened, no milk
- ◆ Lemonade
- ◆ Soda pop
- ◆ Tonic water
- ◆ Flavored water with sweeteners
- ◆ “Juices” with 50% or less fruit juice
- ◆ “Energy” drinks

### Tax-exempt

- ◆ Bottled water
- ◆ Sparkling water
- ◆ Mineral water
- ◆ Club soda
- ◆ Seltzer
- ◆ Beverages with over 50% fruit juice
- ◆ Beverages with over 50 % vegetable juice
- ◆ Beverages with milk or milk product
- ◆ Canned or bottled coffee drinks with cream or milk
- ◆ Beverages with soy, rice or similar milk substitutes

\* Sales of fountain drinks are taxable because they are “prepared foods” (sold with eating utensils — cups, straws, lids).

**Alcoholic Beverages** — Alcoholic beverages are specifically excluded from the definition of “food and food ingredients.” Therefore, all beverages containing 0.5% or more alcohol by volume remain subject to retail sales tax.

**Food Stamp Sales** — Eligible foods under the Food Stamp Act of 1977 purchased with food coupons, including otherwise taxable soft drinks, remain exempt from retail sales tax.

**Sales of Ice** — Ice sold for human consumption is considered a food or food ingredient and is tax-exempt. “Ice sold for human consumption” means ice sold in cubes, shaved or crushed form and in quantities of ten pounds or less in weight per bag or container. Blocks of ice of any weight are not considered a food or food ingredient and are taxable.

The Department of Revenue is in the process of Amending WAC 458-20-244. Persons selling food products should refer to this administrative rule.

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